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ERICSSON INC.
6300 LEGACY DRIVE
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OFFICE OF PETITIONS

In re Application of :
Barry O'Driscoll :
Application No. 09/447,179 : ON PETITION
Filed: 22 November, 1999 :
Atty Dckt No. 34647-00407USPT :

This is a decision on the petition under 37 CFR 1.137(a),¹ filed on 14 April, 2005, which is first treated as a petition to withdraw the holding of abandonment under 37 CFR 1.181.

The petition is **GRANTED**.

The application was filed on 22 November, 1999. On 21 June, 2002, a non-final Office action was mailed, setting a three (3) month shortened statutory period for reply. No reply having been received, the application was held abandoned on 22 September, 2002. Notice of Abandonment was mailed on 18 June, 2003. A copy

¹ A grantable petition under 37 CFR 1.137(a) must be accompanied by:

(1) the required reply, unless previously filed; In a nonprovisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In a nonprovisional utility or plant application filed on or after June 8, 1995, and abandoned for failure to prosecute, the required reply may also be met by the filing of a request for continued examination in compliance with § 1.114. In an application or patent, abandoned or lapsed for failure to pay the issue fee or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.

(2) the petition fee as set forth in 37 CFR 1.17(l);

(3) a showing to the satisfaction of the Commissioner that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(a) was unavoidable; and

(4) any terminal disclaimer (and fee as set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c)).

of an amendment bearing a certificate of mailing dated 23 September, 2002, was filed on 25 June, 2003.

Petitioner asserts that a reply to the Office action mailed on 21 June, 2002, was timely filed. In support, petitioner has supplied a copy of an itemized postcard receipt dated 30 September, 2002, itemizing the filing of, *inter alia*, an amendment in response to the Office action mailed on 21 June, 2002. The postcard identifies the application by application number, filing date, invention title, and first-named inventor's name. Additionally, petitioner has supplied a duplicate copy of the amendment bearing a certificate of mailing dated 23 September, 2002.

The date-stamped on the post card of 30 September, 2002, is after the due date for the response. However, under 37 C.F.R. § 1.8(a)(1) correspondence is considered timely if: (1) the correspondence is mailed or transmitted prior to expiration of the set period for response by being properly addressed to the Patent and Trademark Office as set out in 37 C.F.R. § 1.1(a) and deposited with the U.S. Postal Service with sufficient postage as first class mail or transmitted to the Patent and Trademark Office in accordance with 37 C.F.R. § 1.6(d); and (2) the correspondence includes a certificate for each piece of correspondence stating the date of deposit or transmission. The person signing the certificate should have a reasonable basis to expect that the correspondence would be mailed or transmitted on or before the date indicated.

While the date on the postcard is after the date for filing a timely reply to the Office action mailed on 21 June, 2002, a review of the record indicates that an amendment was filed on 25 June, 2003, in response to the Office action mailed on 21 June, 2002. The amendment bears a certificate of mailing signed by Marcy Overstreet dated 23 September, 2002.² As such, the amendment bears a proper certificate of mailing in compliance with the requirements of 37 C.F.R. § 1.8(a)(1) as set forth above. Accordingly, the Notice of Abandonment is hereby vacated and the holding of abandonment withdrawn.

In accordance with the above finding, the holding of abandonment is withdrawn, and the Notice of Abandonment mailed on 18 June, 2003, is vacated.

²The response is timely because 21 September, 2002, fell on a Saturday.

No petition fee is due and none has been charged.

The application is being referred to Technology Center 2685 for further processing.

Telephone inquiries concerning this matter may be directed to the undersigned at (571)272-3231.

A handwritten signature in cursive script, appearing to read "D Wood".

Douglas I. Wood
Senior Petitions Attorney
Office of Petitions